



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Michael R. Pence
Governor

DEC 07 2016

Carol S. Comer
Commissioner

VIA CERTIFIED MAIL 7016 2140 0000 0989 7572

Ben Miles, President
Parkview Hospital, Inc.
10501 Corporate Drive
Fort Wayne, IN 46845

Re: Adoption of Agreed Order
Commissioner, Indiana Department of
Environmental Management

v.

Parkview Hospital, Inc.
Case No. 2015-23232-A
Fort Wayne, Allen County

Dear Mr. Miles:

This is to inform you that the Agreed Order in the above-referenced case has been approved and adopted by the Indiana Department of Environmental Management. A copy of the Agreed Order is enclosed.

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence. Please note that the civil penalty is due within 30 days after the effective date of the Agreed Order. Payment of \$17,875 should be made payable to the "Environmental Management Special Fund" and sent to:

IDEM Office of Legal Counsel
IGCN, Rm N1307
100 N Senate Ave
Indianapolis, IN 46204

Payment of \$53,625 should be made payable to the "Indiana Finance Authority", with the text "SEP-City of Fort Wayne" and the Case Number of this action included in the memo line of the check and sent to:

Andrea Robertson
Indiana Brownfields Program – SEP
100 N. Senate Avenue
Room 1275
Indianapolis, IN 46204

{over}

Please be sure to include the Case Number on the front of the checks. If you have any questions, please contact Mr. Patrick Burton at (260) 433-4538.

Sincerely,



Phil Perry, Chief
Compliance and Enforcement Branch
Office of Air Quality

Enclosure

cc: Rochelle Marceillars, US EPA, Region 5
Fort Wayne – Allen County Health Department
Patrick Burton, Compliance and Enforcement Branch, OAQ
Lindsey L. Maksim – City of Fort Wayne (Lindsey.Maksim@cityoffortwayne.org)
Andrea Robertson – IFA (AROBERTS@ifa.IN.gov)
Amy Romig - Plews Shadley Racher & Braun LLP (aromig@psrb.com)
<http://www.IN.gov/idem>

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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STATE OF INDIANA) SS: BEFORE THE INDIANA DEPARTMENT OF
) ENVIRONMENTAL MANAGEMENT
COUNTY OF MARION)
)
COMMISSIONER OF THE DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT)
)
)
Complainant,)
)
v.) Case No. 2015-23232-A
)
PARKVIEW HOSPITAL, INC.)
)
Respondent.)

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to IC 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner ("Complainant") of the Indiana Department of Environmental Management ("IDEM"), a department of the State of Indiana created by Indiana Code ("IC") 13-13-1-1.
2. Respondent is Parkview Hospital, Inc. ("Respondent"), which owns and operates the medical waste incinerator with Plant I.D. No. 003-00272, located at 2200 Randallia Drive, Fort Wayne, Allen County, Indiana (the "Site").
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV") on February 19, 2016 via Certified Mail to:

Mr. Mike Packnett, CEO
Parkview Hospital, Inc.
10501 Corporate Drive
Fort Wayne, IN 46845

Mr. David Storey, Registered Agent
Parkview Hospital, Inc.
10501 Corporate Drive
Fort Wayne, IN 46845

5. During an investigation, including an inspection on April 21, 2015, conducted by a representative of IDEM, the following violations were found:

- a. Pursuant to condition D.1.8 (Compliance, Performance Testing) of Part 70 permit No. 31889, performance tests shall be conducted and compliance shall be determined in accordance with the test methods and procedures found in 40 CFR 60.56c, Subpart Ec as amended at 74 FR 51409, October 6, 2009.

Pursuant to condition D.1.9 (Compliance Date) of Part 70 permit No. 31889, the owner or operator of Hospital/Medical/Infectious Waste Incinerators (HMIWI) shall install the necessary air pollution control equipment and be in compliance to meet the emission limits in condition D.1.4 (Hospital/Medical/Infectious Waste Incinerators) no later than October 6, 2014.

Respondent failed to perform a compliance stack test of CO, Cd, D/F, HCl, Hg, Opacity, PM, Pb, and SO₂ for the HMIWI by October 6, 2014, in violation of permit conditions D.1.8 (Compliance, Performance Testing) and D.1.9 (Compliance Date) of Part 70 permit No. 31889.

- b. Pursuant to condition D.1.4 (Hospital/Medical/Infectious Waste Incinerators) of Part 70 permit No. 31889, the source shall not exceed the emission limits specified in 40 CFR 60, Subpart Ce, Table 1b as added at 74 FR 51405, October 6, 2009, and 40 CFR 60.52c(b)(2), Subpart EC as amended at 74 FR 51409, October 6, 2009.

Pursuant to condition E.1.2 Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators NSPS Requirements of Part 70 permit No. 31889, the source shall comply with 40 CFR 60.32e Table 1B emission limits for Medium HMIWI.

Respondent exceeded dioxins/furans ("D/F") emission limits on October 8, 2015, in violation of permit conditions D.1.4 Hospital/Medical/Infectious Waste Incinerators and E.1.2 Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators NSPS Requirements of Part 70 permit No. 31889.

6. Respondent reports that it ceased regular operations of the incinerator on April 20, 2015, and ceased all operations of the incinerator on January 21, 2016.
7. On April 25, 2016, Respondent requested an amendment to its permit to remove the medical waste incinerator and all air pollution control devices associated with it. IDEM approved the Administrative Amendment on June 21, 2016. Respondent has decommissioned and removed the incinerator.
8. In recognition of the settlement reached, Respondent waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is approved by Complainant or Complainant's delegate, and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. When Respondent submitted deviation reports and its annual Compliance Certification for 2014 and 2015 it did not list the violations identified in the Notice of Violation issued to Respondent on February 19, 2016, Case No. 2015-23232-A. Complainant agrees that as part of this settlement, Respondent does not need to submit amended versions of these reports and certifications, and this Agreed Order resolves any violations that could have been brought against Respondent related to the failure to include the violations identified in this case in these reports and certifications.
3. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Patrick Burton, Compliance and Enforcement Manager
Compliance and Enforcement Branch – Mail Code 61-53
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
4. Respondent is assessed and agrees to pay a civil penalty of Seventy-One Thousand Five Hundred Dollars (\$71,500). Within thirty (30) days of the Effective Date of the Agreed Order, Respondent shall pay a portion of this penalty in the amount of Seventeen Thousand Eight Hundred and Seventy-Five Dollars (\$17,875). Said penalty amount shall be due and payable to the Environmental Management Special Fund; the 30th day being the "Due Date". In lieu of payment to IDEM of the remaining civil penalty, Respondent shall make a cash payment to the Indiana Finance Authority ("IFA") to fund a Supplemental Environmental Project ("SEP") of activities related to brownfield redevelopment at a brownfield site ("Brownfield Site") in downtown Fort Wayne, Indiana. Respondent will

make a payment in the amount of Fifty-Three Thousand Six Hundred and Twenty-Five Dollars (\$53,625) to fund SEP activities at the Brownfield Site. Respondent shall make such payment to the IFA within thirty (30) days of the Effective Date of this Agreed Order. Payment to the IFA satisfies Respondent's obligation to undertake a SEP to offset a portion of the civil penalty assessed in this matter. Implementation of this SEP will benefit the community by rejuvenating downtown Fort Wayne neighborhoods, increasing tax base, mitigating threats to human health and the environment and/or reducing blight.

The Brownfield Site at which the SEP proceeds will be spent will be agreed upon among the Complainant, Respondent, the City of Fort Wayne, and the IFA, and will be subject to final approval by the Brownfields Program. The IFA will account for the SEP payment in a Brownfield Site and/or community-specific account and will require the City of Fort Wayne to execute a financial assistance agreement with the IFA, under which the Brownfields Program will oversee the work undertaken at the Brownfield Site funded by SEP proceeds. The IFA will notify IDEM's Compliance/Enforcement Manager when SEP-funded activities at the Brownfield Site are complete.

In the event that Respondent does not make its SEP payment within thirty (30) days of the Effective Date of this Agreed Order, the full amount of the civil penalty as stated in this paragraph, plus interest established by IC-24-4.6-1-101 on the remaining amount, less the portion of the civil penalty Respondent has already paid, will be due to IDEM within fifteen (15) days from Respondent's receipt of IDEM's notice to pay. Interest, at the rate established by IC 24-4.6-1-101, shall be calculated on the amount due from the date which is thirty (30) days after the Effective Date of this Agreed Order until the full civil penalty is paid.

Payment for the SEP is payable by check to the "Indiana Finance Authority." The text "SEP-City of Fort Wayne" and the Case Number of this action shall be included in the memo line of the check. The check shall be mailed to:

Andrea Robertson
Indiana Brownfields Program – SEP
100 N. Senate Avenue
Room 1275
Indianapolis, IN 46204

Respondent shall provide Complainant with documentation of payment to the Indiana Finance Authority within one (1) week of such payment.

5. Civil penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number of this action and shall be mailed to:

IDEM Office of Legal Counsel
IGCN, Rm N1307
100 N Senate Ave
Indianapolis, IN 46204

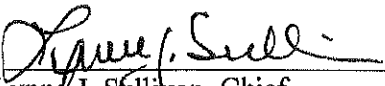
6. This Agreed Order shall apply to and be binding upon Respondent and its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter their status or responsibilities under this Agreed Order.
7. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. Such interest shall be payable to the Environmental Management Special Fund, and shall be payable to IDEM in the manner specified in Paragraph 5, above.
8. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
9. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
10. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of their obligation to comply with the requirements of their applicable permit or any applicable Federal or State law or regulation.
11. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
12. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the NOV.
13. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the EPA or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.

Parkview Hospital, Inc.
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14. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of this Agreed Order and IDEM issues a Resolution of Case letter to Respondent.


REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: 
Lynne J. Sullivan, Chief
Air Compliance Section II
Office of Air Quality

Date: 11/1/16

RESPONDENT:
Parkview Hospital, Inc.


By: 

Printed: Ben Miles

Title: President


Date: 11/11/16

COUNSEL FOR RESPONDENT:

By: 

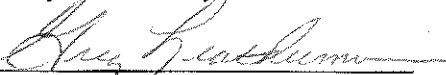
Date: 11/21/16

COUNSEL FOR INDIANA FINANCE AUTHORITY
For the Indiana Brownfields Program

By: 


Date: 12/5/16

COUNSEL AND/OR AUTHORIZED REPRESENTATIVE
For the City of Fort Wayne

By: 

Date: 11/29/16

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 6 DAY OF December, 20 16.
For the Commissioner:

By: 
Keith Baugues, Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental
Management